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April 9, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2010-2011 Administrative Review of the Antidumping Duty Order

SUMMARY:

We have analyzed the case briefs and rebuttal briefs submitted by Titan Tire Corporation ("Petitioner") and Hangzhou Zhongce Rubber Co., Ltd. ("Zhongce") in the 2010-2011 third administrative review of the antidumping duty order on certain new pneumatic off-the-road ("OTR") tires from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes to the *Preliminary Results*.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum ("IDM").

Case Issues:

- Comment 1: Whether to Apply Facts Available to Zhongce's Labor Hours
- Comment 2: Whether to Apply Facts Available to Zhongce's Factory Overhead
- Comment 3: Whether to Deduct VAT from Export Price
- Comment 4: Selection of the Primary Surrogate Country
- Comment 5: Selection of Surrogate Values for Certain Material Inputs
 - A. Carbon Black
 - B. Bead Wire
 - C. Nylon Tire Cord
 - D. Natural Rubber
 - E. Gap-filling with Data from Another Country
- Comment 6: Selection of Surrogate Financial Statements

¹ *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011, 77 FR 61387 (October 9, 2012) ("Preliminary Results")*.



Background: The period of review (“POR”) is September 1, 2010, through August 31, 2011. On October 9, 2012, the U.S. Department of Commerce (“Department”) published the *Preliminary Results* of the administrative review of the antidumping duty order on certain new pneumatic OTR tires from the PRC. In accordance with 19 CFR 351.301(c)(3)(ii) and 19 CFR 351.408(c), Zhongce submitted publicly available information to value factors of production.² In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our *Preliminary Results*. Petitioner and Zhongce submitted case briefs on November 19, 2012,³ and rebuttal briefs on December 3, 2012.⁴ On January 24, 2013, the Department extended the deadline for the final results to April 9, 2013.⁵

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,⁶ combine harvesters,⁷ agricultural high clearance sprayers,⁸ industrial tractors,⁹ log-skidders,¹⁰ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;¹¹ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,¹² front end loaders,¹³ dozers,¹⁴ lift trucks, straddle

² See Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Post-Preliminary Surrogate Value Information Submission of Hangzhou Zhongce Rubber Co., Ltd.,” dated November 7, 2012 (“Zhongce’s Post-Prelim SV Submission”).

³ See Letter from Petitioner entitled “Case Brief of Titan Tire Corporation, Petitioner,” dated November 19, 2012 and Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Case Brief of Hangzhou Zhongce Rubber Co., Ltd.,” dated November 19, 2012. (“Zhongce’s Case Brief”)

⁴ See Letter from Petitioner entitled “Rebuttal Brief of Titan Tire Corporation, Petitioner,” dated December 3, 2012 and Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Rebuttal Brief of Hangzhou Zhongce Rubber Co., Ltd.,” dated December 3, 2012.

⁵ See Memorandum to Christian Marsh entitled “Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated January 24, 2013.

⁶ Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

⁷ Combine harvesters are used to harvest crops such as corn or wheat.

⁸ Agricultural sprayers are used to irrigate agricultural fields

⁹ Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

¹⁰ A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

¹¹ Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver’s shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

¹² Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

carriers,¹⁵ graders,¹⁶ mobile cranes,¹⁷ compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type¹⁸ or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;

¹³ Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

¹⁴ A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform “rough grading” in road construction.

¹⁵ A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

¹⁶ A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform “finish grading.” Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

¹⁷ *I.e.*, “on-site” mobile cranes designed for off-highway use.

¹⁸ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

DISCUSSION OF THE ISSUES

Comment 1: Whether to Apply Facts Available to Zhongce’s Labor Hours

- Petitioner asserts that, despite multiple supplemental questionnaires on the issue from the Department, Zhongce still has not adequately explained its labor reporting methodology. Petitioner contends that the Department should either verify or pursue further Zhongce’s reported labor hours before using them for the final results; otherwise, the Department should resort to facts available.
- Petitioner further asserts that Zhongce did not correctly adjust its hours to account for its employees working an 8-hour day, including a paid 30-minute lunch break.
- Zhongce insists that they have been responsive to the Department’s questionnaires throughout the review, and is willing to respond to any further queries from the Department. Zhongce alleges that the Department did not ask for additional details regarding its labor hour computations and that the Petitioner did not point out any deficiencies at the time of Zhongce’s previous responses.

Department’s Position: There is nothing on the record of this review to suggest that Zhongce reported its labor hours incorrectly. Thus, for the final results, we have made no changes with regards to Zhongce’s labor hours.

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”), provide that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In three supplemental questionnaires, the Department requested that Zhongce provide further details and explanation regarding its labor hours and labor allocations.¹⁹ The Department also asked Zhongce to adjust its hours to include the paid 30-minute lunch break, for a total of an 8-hour day.²⁰ In response to the Department’s supplemental questionnaires, Zhongce provided backup calculations, timesheets, and a narrative explanation as to how it derived its labor hour calculations.²¹ Zhongce also made the adjustment to its labor hours to account for the paid 30-minute lunch break.²² We have examined Zhongce’s labor figures and they appear to be explained reasonably and reported correctly. Petitioners have not pointed to anything on the record which would indicate that Zhongce’s labor figures are aberrational or otherwise unusual

¹⁹ See Letter from the Department entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Supplemental Questionnaire for Sections C and D,” dated April 25, 2012 (“First Supplemental C&D Questionnaire”) at 8-9; Letter from the Department entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Second Supplemental Questionnaire for Sections C and D Questionnaire,” dated July 6, 2012 (“Second Supplemental C&D Questionnaire”) at 8; Letter from the Department entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Third Supplemental Questionnaire for Sections C and D Questionnaire,” dated August 17, 2012 (“Third Supplemental C&D Questionnaire”), at 4.

²⁰ See Third Supplemental C&D Questionnaire, at 4.

²¹ See Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Supplemental Sections C and D Response of Hangzhou Zhongce Rubber Co., Ltd.,” dated May 21, 2012 (“Response to the First Supplemental C&D Questionnaire”) at 10-11 and Exhibits D.16, D.17, and D.20; Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co., Ltd., to Part Two of Second Supplemental Sections C and D Questionnaire,” dated August 2, 2012 at 11; Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co., Ltd., to the Third Supplemental Sections C and D Questionnaire,” dated August 2, 2012 (“Response to the Third Supplemental C&D Questionnaire”) at 3-4 and Exhibits D.39 and D.40.

²² See Response to the Third Supplemental C&D Questionnaire, at 4 and Exhibits D.39 and D.40.

for producers of OTR tires. Thus, we find that, contrary to Petitioner's assertions, Zhongce has provided a labor allocation which accounts for a variety of work schedules to reflect actual hours worked, allocated across the production of subject merchandise and inclusive of the paid 30-minute lunch break that its employees receive. Consequently, there is no reason to apply facts available to Zhongce's labor hours in the instant review.

Comment 2: Whether to Apply Facts Available to Zhongce's Factory Overhead

- Petitioner contends that Zhongce failed to answer the Department's queries regarding what materials it classifies as indirect materials; thus, if the Department cannot satisfy itself that Zhongce's listing of direct materials is complete, the Department should apply facts available.
- Zhongce insists that it has been responsive to the Department's questionnaires throughout the review, and is willing to respond to further queries from the Department. Zhongce contends that the Department did not ask for additional details regarding its split between direct and indirect material inputs, and that the Petitioner did not identify any deficiencies at the time of Zhongce's previous responses.

Department's Position: There is nothing on the record of this review to suggest that Zhongce misclassified any direct materials as indirect materials or otherwise failed to report any direct material inputs. Thus, for the final results, we have made no changes with regards to Zhongce's factory overhead calculation or direct materials calculations.

The Department's first supplemental questionnaire asked Zhongce to identify any raw materials that it believed should be classified as factory overhead.²³ In response, Zhongce asserted that it "has provided the factor of production ("FOP") information for the sales of subject merchandise in U.S. market {sic} during the POR at Exhibit D.14."²⁴ Thus, without evidence to the contrary, the Department concludes that Zhongce has provided all direct material inputs in its FOP database. Finding no omissions on Zhongce's part, we have no reason to apply facts available in the instant review.

Comment 3: Whether to Deduct VAT from Export Price

- Petitioner asserts that, if the Department decides to implement its new methodology, whereby it would reduce export price for export taxes and similar charges, including value added taxes ("VAT") applied to export sales, then the new methodology should be applied for the final results of this review. Petitioner states that they have provided all the necessary information for such a calculation in an earlier submission.²⁵

²³ See First Supplemental C&D Questionnaire, at 7.

²⁴ See Response to the First Supplemental C&D Questionnaire, at 8 and Exhibit D.14.

²⁵ Petitioner cites to the following in support of its argument: *Proposed Methodology for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings; Request for Comment*, 76 FR 4866 (January 27, 2011) ("*Proposed Methodology*").

- Zhongce counters that the new methodology is not applicable in this case.²⁶

Department's Position: We agree with Zhongce. On June 19, 2012, the Department revised its methodology for treating export taxes and other charges in non-market economy ("NME") antidumping duty proceedings.²⁷ In *Export Taxes in NMEs*, the Department explained that it will implement a methodological change to reduce export price or constructed export price in certain NME antidumping proceedings by the amount of export tax, duty, or other charge, pursuant to section 772(c)(2)(B) of the Act. However, the Department further stated that the methodological change detailed in the notice will be applied to administrative NME proceedings involving merchandise from the PRC and the Socialist Republic of Vietnam which initiated after publication of *Export Taxes in NMEs*. Because the instant review was initiated before the publication of *Export Taxes in NMEs*, the Department will not apply this methodological change for the final results.²⁸

Comment 4: Selection of the Primary Surrogate Country

- Zhongce asserts that the Department erred in selecting Thailand as the primary surrogate country, and should instead select the Philippines. Zhongce argues that the Department's calculation of a preliminary dumping margin of nearly 133 percent in the *Preliminary Results* is enough to suggest that there is something wrong with the use of Thailand as surrogate country, since Zhongce was assigned a separate rate of just 28.97 percent in the *First*

²⁶ Zhongce cites to the following in support of its argument: *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008), and accompanying IDM at Comment I.1; *Proposed Methodology*; *National Ass'n of Home Health Agencies v. Schweiker*, 690 F.2d 932 (D.C.Cir.1982), cert. denied, 459 U.S. 1205 (1983); *American Trucking Ass'n v. United States*, 688 F.2d 1337 (11th Cir.1982), rev'd on other grounds, 464 U.S. 1224 (1984); *Donovan v. Huffines Steel Corp.*, 645 F.2d 288 (5th Cir.1981); *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 541 (1978).

²⁷ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) ("*Export Taxes in NMEs*").

²⁸ This is consistent with the Department's decision in *Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012), and accompanying IDM at Issue 1.

Administrative Review when Thailand was not the primary surrogate country.²⁹ Zhongce contends that the 133 percent rate calculated for it in the *Preliminary Results* is akin to an adverse facts available (“AFA”) rate.

- Zhongce notes that the Philippines meet the statutory criteria for selection as the surrogate country.
- Zhongce further argues that the standard of “comparable” merchandise has been misconstrued to be “identical” merchandise, and that the Department should consider all pneumatic tires of rubber to be comparable merchandise. Thus, in considering all pneumatic tires of rubber to be comparable merchandise, the Philippines qualifies as a producer of comparable merchandise and is entirely appropriate for selection as a surrogate country.
- Zhongce argues that, because the Department typically excludes Thai exports from consideration as surrogate values (due to broadly available, non-industry-specific export subsidies), this should also mean that Thailand should be disfavored as a source for surrogate values when a better alternative exists.
- Zhongce argues that the Thai surrogate data is less complete and less specific than the Philippines data on the record.
- Zhongce asserts that Thailand imports mainly high-performance grade inputs, and that such higher-priced inputs would lead to an exaggerated dumping margin.
- Petitioner argues that the Department already thoroughly made its case for the selection of Thailand as the primary surrogate country at the *Preliminary Results*, and that Zhongce provides no new analysis.³⁰

²⁹ Zhongce cites to the following in support of its arguments: *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review and Final Rescission, in Part*, 77 FR 14495 (March 12, 2012); *Washington Int’l Ins. Co. v. United States*, Court No. 08-00156, Slip Op. 2009-78, at 23-24 (CIT July 29, 2009); *PAM, S.p.A. v. United States*, 495 F. Supp. 2d 1360, 1373 (CIT 2007); *Shandong Huarong Gen. Group Corp. v. United States*, 29 CIT 1227, 1232-33 (2005); *Chlorinated Isocyanurates From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 41746 (July 16, 2012); *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 25, 2011) (“*First Administrative Review*”); *Frontseating Service Valves From the People’s Republic of China: Preliminary Results of the 2010-2011 Antidumping Duty Administrative Review*, 77 FR 26489 (May 4, 2012); *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011); *Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 76 FR 49443 (August 10, 2011); *Steel Wire Garment Hangers From the People’s Republic of China: Antidumping Duty Administrative Review, 2010–2011*, 77 FR 66952 (November 8, 2012) (“*Steel Wire Garment Hangers from the PRC*”), and accompanying Decision Memorandum for Preliminary Results at 15-16; *Folding Metal Tables and Chairs from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32118, 32122 (July 7, 2009); *China National Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), *aff’d*, 104 Fed. Appx. 183 (Fed. Cir. 2004); *Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part*, 76 FR 12704, 12708 (March 8, 2011), citing the legislative history of the Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590.

- Petitioner further asserts that, on the primary point of divergence—with regard to data availability—Thailand is better than the Philippines for the reasons the Department found: (1) comparability of merchandise produced by companies whose financial statements were used to calculate surrogate financial ratios, and (2) the availability of domestic natural rubber prices in Thailand.
- Petitioner further contends that Zhongce’s main arguments against using Thailand hold no merit. Petitioner summarizes Zhongce’s primary arguments against Thailand as such: (1) Thai values are higher than the Indian values from the previous review and (2) Thai values are higher than the Philippines values proposed by Zhongce. Petitioner notes that, with regards to India, the surrogate values are from a prior administrative review and from a country which the Department has determined is no longer considered a suitable surrogate country for the PRC.
- Petitioners argue that Zhongce did not cite to any source to support its sweeping arguments regarding distortions in the Thai market which would lead to higher surrogate values.
- Petitioners contend that, despite Zhongce’s argument that some Philippine tariff classifications are more accurate than the corresponding Thai classifications, Zhongce provided no information to demonstrate that its inputs are more accurately described by the Philippine definitions; and indeed, Petitioners assert that, on their face, the tariff descriptions of the Thai categories appear to be quite similar to the Philippine descriptions.

Department’s Position: We will continue to use Thailand as the primary surrogate country for the final results of this review for the reasons discussed below.

Zhongce’s argument comparing the magnitude of the margin calculated at the *Preliminary Results* with the separate rate it was assigned in the *First Administrative Review* as grounds to cast doubt upon the use of Thailand as primary surrogate country is inappropriate for several reasons. Firstly, Zhongce has never been assigned its own individually calculated rate, as it was only a separate rate respondent in the *First Administrative Review*. There is no basis to determine whether the calculated rate in this review contains any anomalies with respect to Zhongce. Unlike the rate calculated for Zhongce in the instant review, the assigned separate rate from the *First Administrative Review* did not take into account Zhongce’s particular production or selling practices.³¹ Second, the period of review was different (2008-2009 versus 2010-2011), which will reflect any changes in the market (including U.S. price changes) and can naturally affect prices of inputs and resulting margins. Third, the surrogate country used in the *First Administrative Review* was India, which is not on the Department’s list of economically comparable countries in the instant review.³² Additionally, in response to Zhongce’s argument

³⁰ Petitioner cites to the following in support of its arguments: *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

³¹ See *First Administrative Review*, 76 FR at 22873-74.

³² See Letter to All Interested Parties entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values,” dated December 12, 2011 (“Surrogate Country Memo”) at Attachment 1. The Department considered Colombia, Indonesia, Peru, Philippines, South Africa, Thailand, and Ukraine to be economically comparable to the PRC.

that such a high margin is akin to an AFA rate, we note that, in this review, we have not resorted to AFA or even facts available, and have instead calculated a margin for Zhongce based upon the factors of production and sales information Zhongce provided. Thus, the rate calculated for Zhongce is not speculative, but is based upon the facts on the record of this case.

At the *Preliminary Results*, in order to select an appropriate surrogate country, we first looked to economic comparability in order to determine which country to use for surrogate values.³³ As is the Department's practice, we considered all seven countries identified in the Surrogate Country Memo as having met the economic comparability test equally.³⁴ The second test we used was to compare export data for the seven countries listed in the Surrogate Country Memo.³⁵ We considered eight Harmonized Tariff System ("HTS") codes at the six-digit level which were derived from the 13 10-digit HTS codes included in the scope of the order.³⁶ Thus, we found that all countries on the surrogate country list had significant exports of comparable or identical merchandise, and that none of the potential surrogate countries were disqualified through our significant producer test.³⁷ Finally, we looked at data availability.³⁸ Due to the lack of financial statements and data for valuing FOPs from Colombia, Indonesia, Peru, South Africa, and Ukraine, we discarded those five countries from our surrogate country analysis.³⁹ Thus, we weighed the data for Thailand and the Philippines and determined that the Thai financial statements were a better match for the experience of an OTR tire producer in the PRC and that there was also a better, more specific source of Thai data with which to value natural rubber, a significant input for OTR tires.⁴⁰ In light of the facts, the Department selected Thailand as the primary surrogate country for this review.⁴¹

Zhongce notes several cases in which the Philippines was chosen as a surrogate country, including one case, *Steel Wire Garment Hangers from the PRC*, where the Department explicitly chose the Philippines over Thailand as the primary surrogate country. The facts in that case are distinguishable from those here. In *Steel Wire Garment Hangers from the PRC*, the Department found the Thai financial statements to be from companies that did not produce comparable merchandise, whereas the Philippines financial statements were from producers of comparable merchandise. Thus, all else being equal, the Department chose the Philippines as the primary surrogate country because data availability in that specific factual context favored the Philippines.⁴² This is the reverse, factually, of the situation in the instant review, where we stated a preference for Thailand based upon data availability.

³³ See Memorandum to Paul Piquado entitled "Decision Memorandum for Preliminary Results of 2010-2011 Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated October 1, 2012 ("Preliminary Decision Memorandum") at 8.

³⁴ *Id.*, at 8-9.

³⁵ *Id.*, at 9.

³⁶ *Id.*, at 9-10.

³⁷ *Id.*, at 10.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*, at 10-11.

⁴¹ *Id.*, at 11.

⁴² *Steel Wire Garment Hangers from the PRC*, and accompanying Decision Memorandum at 14-15.

Zhongce argues that, because Thailand maintains “broadly available, non-industry specific export subsidies,” the Department should also disfavor Thailand as a source for surrogate values.⁴³ We disagree that the broadly available, non-industry specific export subsidies offered to Thai companies impact the surrogate values used in this case, since the Department used Thai domestic prices and import prices to value Zhongce’s SVs, neither of which benefit from export subsidies. While the Department has determined that there are broad-based subsidies for exports from India, Indonesia, and Thailand,⁴⁴ and the Department excludes imports from these countries in the calculation of surrogate values when using import data for other surrogate countries (*i.e.*, India, Indonesia, South Korea and Thailand’s exports are excluded because there is reason to believe their exports benefitted from export subsidies), the Department has never previously determined that these countries are themselves unsuited to be the primary surrogate country because of the presence of export subsidies.⁴⁵ Zhongce offers no explanation or citation for its assertion that export subsidies would serve to inflate either import or domestic prices in Thailand.⁴⁶

Zhongce asserts that the Department used less-specific HTS codes from Thailand to value its inputs for the *Preliminary Results*, when Zhongce had actually supplied more specific values for the Philippines. Despite a supplemental questionnaire specifically requesting detailed descriptions of Zhongce’s inputs,⁴⁷ Zhongce never supplied detailed descriptions of its inputs. Instead, Zhongce provided relatively vague descriptions of its inputs and a suggested list of surrogate HTS codes from the Philippines.⁴⁸ In general, where the categories suggested by Zhongce seemed reasonable, the Department cross-referenced the Philippines HTS codes, which Zhongce had suggested, to Thai HTS codes. However, due to a lack of detailed data on Zhongce’s inputs, there were a few instances where the Department was unable to select an HTS code below the six-digit level, though the Department strove to match the most logical category

⁴³ See Zhongce’s Case Brief, at 8.

⁴⁴ See, *e.g.*, *Preliminary Results*, and accompanying Decision Memorandum at “Factor Valuations.”

⁴⁵ See, *e.g.*, *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 76 FR 76135, 76136 and 76140 (December 6, 2011) (“*Diamond Sawblades Preliminary Results*”), where the Department selected India as the primary surrogate country, but excluded exports from India, Indonesia, South Korea, and Thailand due to broadly available, non-industry specific export subsidies, unchanged in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143, 11144 (February 15, 2013) (“*Diamond Sawblades Final Results*”); *Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 39990 (July 6, 2012), where the Department selected Indonesia as the primary surrogate country, but excluded exports from India, Indonesia, South Korea, and Thailand due to broadly available, non-industry specific export subsidies, unchanged in *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2010-2011 Antidumping Duty Administrative Review, Rescission In Part, and Intent To Rescind in Part*, 77 FR 40579 (July 10, 2012), where the Department selected Thailand as the primary surrogate country, but excluded exports from India, Indonesia, South Korea, and Thailand due to broadly available, non-industry specific export subsidies, unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 3396 (January 16, 2013).

⁴⁶ See Zhongce’s Case Brief, at 7-8.

⁴⁷ See Second Supplemental C&D Questionnaire, at 8-10.

⁴⁸ See Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co., Ltd., to Part One of Second Supplemental Sections C and D Questionnaire,” dated July 26, 2012 (“Part One Response to the Second Supplemental C&D Questionnaire”), at Exhibit D.25.

based upon (1) the category description in the Global Trade Atlas (“GTA”)⁴⁹ and the input description provided by Zhongce,⁵⁰ (2) the Philippine HTS category suggested by Zhongce,⁵¹ (3) information provided by Zhongce with regards to its market economy purchases (“MEPs”),⁵² and (4) information provided by the Petitioner.⁵³

In the case of naphthenic oil and Plaxolene50, both of which Zhongce described as “Naphthenic Oil,” the Department declined to use the 3824.20 category suggested by Zhongce because its description referenced “naphthenic acids,” not “oils.”⁵⁴ Zhongce provided no detailed information which would allow its naphthenic oils to be placed in the category it suggested for the Philippines under Chapter 38, “Miscellaneous chemical products”. Instead, the Department selected categories under Chapter 27, “Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.” Online research showed “naphthenic base rubber oil” to have been classified under the code 2710.19, which is described as “Other heavy oils and preparations containing $\geq 70\%$ by weight of oils.”⁵⁵ Thus, to value both naphthenic oil and Plaxolene50, the Department used classifications for Thailand falling under HTS code 2710.19.

Zhongce’s contention with regards to the Department’s selection of Thai HTS category 4002.39 to value “chlorobutyl rubber”⁵⁶ is misleading and misconstrues the Department’s selection of a valuation for chlorobutyl rubber. Due to business proprietary information, the issue cannot be discussed here. Please refer to the Final Analysis Memo at pages 2-3 for a complete discussion of this issue.⁵⁷

Finally, Zhongce infers, without any citation or basis in fact, that Thailand “imports mainly highly-performance grade inputs” which will be “higher-priced than the locally available standard grade inputs.”⁵⁸ Zhongce made a similar (and also unsupported) contention in its

⁴⁹ GTA data and HTS descriptions are available at www.gtis.com/gta.

⁵⁰ See Part One Response to the Second Supplemental C&D Questionnaire at Exhibit D.25, lines 35 and 37.

⁵¹ *Id.*

⁵² See Response to the First Supplemental C&D Questionnaire, at D.10.

⁵³ See Letter from Petitioner entitled “New Pneumatic Off-the-Road Tires from the People’s Republic of China (Administrative Review, POR-3): Petitioner’s Surrogate Value Submission,” dated February 2, 2012 (“Petitioner’s February SV Submission”), at Attachment 1; Letter from Petitioner entitled “New Pneumatic Off-the-Road Tires from the People’s Republic of China (Administrative Review, POR-3): Petitioner’s Fact Submission,” dated February 17, 2012 (“Petitioner’s Factual Submission”) at Attachment 3; and Letter from Petitioner entitled “New Pneumatic Off-the-Road Tires from the People’s Republic of China (Administrative Review, POR-3): Petitioner’s Surrogate Value Submission,” dated August 6, 2012 (“Petitioner’s August Surrogate Value Submission”) at 3 and Attachments 1 and 2.

⁵⁴ See Part One Response to the Second Supplemental C&D Questionnaire at Exhibit D.25.

⁵⁵ See Memorandum to the File through Wendy J. Frankel entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results Surrogate Value Memorandum,” dated October 1, 2012 (“Prelim SV Memo”) at Attachment III.

⁵⁶ See Zhongce’s Case Brief, at 9.

⁵⁷ See Memorandum to the File through Eugene Degnan entitled “2010-2011 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Analysis of the Final Results Margin Calculation for Zhongce,” dated April 9, 2013 (“Final Analysis Memo”).

⁵⁸ *Id.*

surrogate country arguments.⁵⁹ Based on additional research, the Department concluded that, because Thailand is the largest producer of natural rubber in the world, a reliable domestic source of natural rubber would be better than limited import data for natural rubber.⁶⁰ Thus, for the *Preliminary Results*, we used Thai domestic rubber prices to avoid any distortions that might be caused by using the more limited GTA data available for Thai natural rubber imports.⁶¹ Regardless, there is nothing on the record to suggest that any other Thai imports of inputs for tires are “niche” or “mainly high-performance grade” or would otherwise be “higher-priced.”

Comment 5: Selection of Surrogate Values for Certain Material Inputs

A. Carbon Black

- Zhongce asserts that the Department should pick the category “Rubber Grade Carbon Blacks” (2803.00.10) to value carbon black because it is a more specific category, rather than the category “Other Carbon Blacks” (2803.00.30), which was used for the *Preliminary Results* and is less specific.⁶²
- Petitioner rejects Zhongce’s contention that the Department should use the category “Rubber Grade Carbon Blacks.” Petitioner notes that Zhongce itself proposed the classification “Other Carbon Blacks” in its second supplemental response and Zhongce has provided no evidence that it uses the more specific input “Rubber Grade Carbon Black.” Petitioner further argues that, at this point in the case, it is too late for Zhongce to change the operative facts.

Department’s Position: Because the category Zhongce suggests for the final results (2803.00.10, “Rubber Grade Carbon Blacks”) appears to be more specific to Zhongce’s finished product (*i.e.*, rubber tires), the Department will use the more specific category “Rubber Grade Carbon Blacks” (2803.00.10) from Thailand (the primary surrogate country) to value all of Zhongce’s carbon black for the final.

In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s criteria for selecting surrogate value information are normally based on the use of publicly available information; the Department considers several factors when choosing the most appropriate publicly available information, including the quality, specificity, and contemporaneity of the data.⁶³ Additionally, it is the Department’s precedent to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing

⁵⁹ See Letter from Zhongce entitled “New Pneumatic Off-the-Road Tires from the PRC: Initial Comments on Surrogate Country Selection of Hangzhou Zhongce Rubber Co., Ltd.,” dated March 2, 2012 (“Zhongce’s Surrogate Country Comments”), at 4, where Zhongce alleges that Thai imports of natural rubber would be skewed towards specialty grades and types.

⁶⁰ See Prelim SV Memo, at Attachment VII.

⁶¹ *Id.*, at 5.

⁶² Zhongce cites to the following in support of its argument: HTSUS, General Rule of Interpretation 3(a) (2009); *Home Depot U.S.A., Inc. v. United States*, 491 F.3d 1334, 1336 (Fed. Cir. 2007); *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246, 1251-52 (Fed. Cir. 2004).

⁶³ See, e.g., *Certain Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 (May 27, 2010) and accompanying IDM at Comment 3.

the FOPs on a case-by-case basis.⁶⁴ As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available surrogate value is for each input.⁶⁵

Based upon its description, the 2803.00.10 category for “Rubber Grade Carbon Blacks” is more specific than the catch-all 2803.00.30 category for “Other Carbon Blacks.” Because it is the Department’s practice to consider specificity when selecting surrogate values, and because Zhongce produces tires of rubber, the “Rubber Grade Carbon Blacks” category is more appropriate to use than the less specific category for “Other Carbon Blacks.” Thus, for the final results, we have used “Rubber Grade Carbon Blacks” (2803.00.10) from Thailand to value all of Zhongce’s carbon black inputs.

B. Bead Wire

- Zhongce asserts that the Department erred in picking the category “Stranded Wire, Plated or Coated with Brass and of a Diameter Not Exceeding 3 MM” (7312.10.20.000) as a surrogate for bead wire. Zhongce contends that bead wire is not stranded, but is a single-strand wire, and thus “Beadwire (Brass Coated High Carbon Steel Wire For Pneumatic Rubber Tyres)” (7217.30.31.00) from the Philippines would be a more specific surrogate value.
- Petitioner argues that Zhongce’s contention that its bead wire is not stranded is a change in factual position, since Zhongce had earlier submitted the Philippines category for “Stranded Wire Not Electrically Insulated, Of Iron Or Steel, Of Diameter of More Than 64 Mm” (7312.10.30.00). Thus, Petitioner argues that, when the Department selected a category for stranded wire from Thailand, it was in keeping with Zhongce’s second supplemental response to the Department.

Department’s Position: In its FOP submissions, Zhongce described its bead wire input as “Bead Wire 0.96m/m.”⁶⁶ In response to the Department’s request for further descriptions of its inputs, and prior to the *Preliminary Results*, Zhongce placed onto the record, for use in valuing its bead wire, the Philippines HTS category 7312.10.30.00, “Stranded Wire Not Electrically Insulated, Of Iron Or Steel, Of Diameter Of More Than 64 Mm.”⁶⁷

Petitioner’s August Surrogate Value Submission suggested that the Department use the category 7312.10.20.000, “Stranded Wire Plated Or Coated With Brass And Of A Diameter Not Exceeding 3 Mm,” from Thailand.⁶⁸ Petitioner submitted an excerpt from a journal article

⁶⁴ See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying IDM at Comment 1; *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying IDM at Comment 2.

⁶⁵ *Id.*

⁶⁶ See Response to the First Supplemental C&D Questionnaire, at D.11, unchanged in Part One Response to the Second Supplemental C&D Questionnaire, at D.25.

⁶⁷ See Part One Response to the Second Supplemental C&D Questionnaire, at D.25, row 25.

⁶⁸ See Petitioner’s August Surrogate Value Submission, at 3-4 and Attachment 2.

suggesting that bead wire for pneumatic tires is made of “brass-coated steel cords.”⁶⁹ The Petitioner’s suggested category approximately matches the category Zhongce suggested prior to the *Preliminary Results*, both of which fall within HTS 7312.10 and are for stranded wire, and the input description which Zhongce provided. Thus, for the *Preliminary Results*, the Department selected the category suggested by the Petitioner.⁷⁰

Additionally, we note that the category we used to value Zhongce’s bead wire for the *Preliminary Results* is for brass coated wire, which conforms to the description of bead wire from the journal article the Petitioner placed on the record.⁷¹ Furthermore, the category Zhongce proposed prior to the *Preliminary Results* was for wire of a diameter of more than 64 mm, which, compared with their stated input of 0.96 mm, would be inaccurate.⁷² Thus, the Department chose a surrogate value for bead wire that comported most closely with Zhongce’s provided input description and the data on the record, and was from the primary surrogate country: 7312.10.20.000, “Stranded Wire Plated Or Coated With Brass And Of A Diameter Not Exceeding 3 Mm,” from Thailand.⁷³

After the *Preliminary Results*, Zhongce placed more GTA data on the record, suggesting other possible categories for bead wire.⁷⁴ In its case brief, Zhongce argues that bead wire is “not stranded, but just a single-strand wire.”⁷⁵ Zhongce does not cite to any record source which might confirm this statement. Moreover, Zhongce previously only described the bead wire it uses as “bead wire 0.96m/m.”⁷⁶ Zhongce has never stated that it uses single stranded wire for its bead wire.

Zhongce has offered neither record evidence nor compelling argument for why we should change our classification of their bead wire input from the *Preliminary Results*. Thus, we are not selecting a different HTS category for bead wire for these final results.

C. Nylon Tire Cord

- Zhongce asserts that the fact that the value for nylon tire cord, calculated using the Thai data, is roughly double the value used in the prior review with India as surrogate country and is nearly four times the value of the Philippine data in this review shows that the data for nylon tire cord from Thailand are anomalous.
- Petitioner notes that Zhongce agrees with the HTS classification and only argues against the Thai price because it is higher than the value from India in the last review and higher than the value that Zhongce put on the record for the Philippines, none of which proves that the Thai value is unreliable or otherwise aberrational.

⁶⁹ *Id.*, at Attachment 2.

⁷⁰ *Id.*, at 3-4 and Prelim SV Memo at 6.

⁷¹ See Petitioner’s August Surrogate Value Submission at Attachment 2: “Brass-coated steelcords are the principal strengthening elements in specific regions of a pneumatic tire such as the belt, carcass and bead.”

⁷² See Part One Response to the Second Supplemental C&D Questionnaire, at D.25, row 25.

⁷³ See Prelim SV Memo, at 6 and Attachment I.

⁷⁴ See Zhongce’s Post-Prelim SV Submission, at D.42.

⁷⁵ See Zhongce’s Case Brief, at 11.

⁷⁶ See Part One Response to the Second Supplemental C&D Questionnaire, at D.25, row 25.

Department's Position: We agree with Petitioner and will make no changes to the valuation of nylon tire cord for the final results. Zhongce does not object to the HTS category used by the Department (*i.e.*, 5902.10, "Tire Cord Fabric Of High Tenacity Yarn, Of Nylon Or Other Polyamides"), only to the resulting surrogate value.⁷⁷

In the case of the Indian value from a prior administrative review, we note that (1) the data period was completely different and thus cannot be compared to the current POR; (2) India is not on the Department's list of economically comparable countries in the instant review; and (3) the HTS category which Zhongce used to compare the value for nylon tire cord in India (*i.e.*, 5607.50.20) is completely different from the HTS category used by the Department in the current review (*i.e.*, 5902.10).⁷⁸ Thus, Zhongce's comparison to Indian HTS data from a prior review does not establish that the Thai data used in this review are aberrational.

With respect to the Philippines data, the Department has stated that the existence of higher prices alone does not necessarily indicate price data are distorted or unrepresentative.⁷⁹ That is, simply comparing the values for two countries (*e.g.*, Thailand and the Philippines) does not allow one to draw a conclusion as to which value, if any, is aberrational. Zhongce provides no reason, such as small import quantities, and identifies no record evidence other than the values themselves why the Department should conclude that the Thai value is aberrational in this particular instance. Because we have no factual basis upon which to determine that the Thai values are anomalous, we continue to find that the Thai import data for 5902.10 are a reliable source to value nylon tire cord for the final results.

D. Natural Rubber

- Zhongce asserts that the in-country Thai prices the Department used to value natural rubber at the *Preliminary Results* were susceptible to broad-based subsidies and other distortive protectionist measures in the Thai economy. Zhongce further asserts that the Philippines rubber import prices, which it placed on the record, confirm that the Thai prices are distorted and unjustifiably high. Thus, Zhongce contends that the Department should use Philippines import data to value natural rubber inputs.
- Petitioner argues that Zhongce's allegations lack any sort of factual foundation. As such, Petitioner asserts that the Department should reject Zhongce's contentions with regards to natural rubber.

Department's Position: We agree with Petitioners and will make no changes to the surrogate value for natural rubber for the final results.

⁷⁷ See Zhongce's Case Brief, at 11.

⁷⁸ See Petitioner's Factual Submission, at Attachment 3 for HTS code and value from the previous administrative review; Zhongce's Case Brief, at Attachment 1; and the Prelim SV Memo at Attachment I.

⁷⁹ See, *e.g.*, *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) ("*Drawn Stainless Steel Sinks*"), and accompanying IDM at Comment 2.

Zhongce did not cite to any source to support its claim that the Thai economy is distorted by pervasive and broad-based subsidies.⁸⁰ Nor has Zhongce explained how broad-based subsidies, were they to exist, would lead to aberrationally high domestic prices for natural rubber in Thailand. The only specific subsidies referenced by Zhongce are export subsidies,⁸¹ and we have already addressed that issue under Comment 4 above, “Selection of the Primary Surrogate Country,” by noting Zhongce’s inability to explain how widely available export subsidies might affect import or domestic prices in Thailand. Additionally, the Department has, in the past, used domestic prices from a primary surrogate country to value certain FOPs despite exports from that country also being excluded as surrogate values by the Department due to receipt of non-industry specific export subsidies.⁸²

As in the case of nylon tire cord in Comment 5C above, the Department has concluded that the existence of higher prices alone does not necessarily indicate the price data are distorted or unrepresentative.⁸³ Simply comparing the values for two countries (*e.g.*, Thailand and the Philippines) does not allow one to determine which, if either, value is aberrational. As with nylon tire cord, Zhongce is unable to provide a reason or identify any record evidence as to why the Department should use the Philippines value and not the Thai value in this particular instance.

As the Department explained at the *Preliminary Results*, Thailand is the largest producer of natural rubber in the world, and has very reliable domestic rubber price data.⁸⁴ The Rubber Research Institute of Thailand (“RRIT”), a government body, publicly reports natural rubber prices in Thailand on a daily basis on its website.⁸⁵ The prices reported by the RRIT are compiled by the Association of Natural Rubber Producing Countries (“ANRPC”) and are archived and publicly reported on its website.⁸⁶ The natural rubber data from Thailand represent a broad market average of prices for natural rubber in Thailand in forms which are specific to Zhongce’s natural rubber inputs.⁸⁷ Moreover, the Thai natural rubber prices cover every business day of the POR and are broad based data from a reliable and public source in the primary surrogate country.⁸⁸ In Zhongce’s Surrogate Country Comments, Zhongce complained that the Department should not use Thai imports of natural rubber because Thailand is a large producer of raw rubber and its imports of natural rubber would likely skew towards more expensive specialty grades.⁸⁹ Thus, due to the availability of reliable data in this case, the Department has relied upon a domestic source with which to value natural rubber.

⁸⁰ See Zhongce’s Case Brief, at 11-12.

⁸¹ *Id.*, at 8.

⁸² See, *e.g.*, *Diamond Sawblades Preliminary Results*, where the Department selected India as the primary surrogate country, but excluded exports from India, Indonesia, South Korea, and Thailand due to broadly available, non-industry specific export subsidies. Unchanged in *Diamond Sawblades Final Results*.

⁸³ See *Drawn Stainless Steel Sinks*, at Comment 2.

⁸⁴ See Preliminary Decision Memorandum at 11 and Prelim SV Memo at 5 and Attachment VII.

⁸⁵ *Id.* The RRIT is under the Thai Department of Agriculture

⁸⁶ *Id.* Thailand is a member of the ANRPC.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Zhongce’s Surrogate Country Comments, at 4.

Additionally, there is certain business proprietary information on the record of this case which corroborates the surrogate value for natural rubber that the Department used at the *Preliminary Results*; please refer to the Final Analysis Memo at page 3 for details. Because the cumulative evidence favors use of the Thai domestic rubber data against the Philippines rubber import data, we will continue to value natural rubber using Thai domestic rubber price data obtained from the ANRPC.

E. Gap-Filling with Data from Another Country

- Zhongce asserts that gap-filling – *i.e.*, using a secondary surrogate country to obtain surrogate values from when useable values do not exist in the primary surrogate country – is part of the Department’s standard practice. Zhongce further contends that, in the instant case, if the Department does not use the Philippines as the primary surrogate country, that Philippines data should be used in place of Thai data which is anomalous or otherwise missing.⁹⁰
- Petitioner counters that, because Thailand was selected as the primary surrogate country, Thai data should be used whenever possible and the Philippines should only be used as a secondary surrogate country in cases where the Thai data is clearly unreliable or otherwise aberrational. Petitioner further contends that Zhongce has not demonstrated that Thai data are unreliable or aberrational, thus negating this as an option in the instant review.

Department’s Position: Under 19 CFR 351.408(c)(2), our practice is to “value all factors in a single surrogate country” when we have useable and reliable data, as supported by record evidence.⁹¹ In this instance, we selected Thailand as our primary source for surrogate values pursuant to section 773(c)(4)(A)-(B) of the Act (*see* Comment 4, above). Accordingly, the Department’s first preference in selecting surrogate value data is publicly available Thai data for the POR, where there is no evidence to show that the data are aberrational or otherwise unreliable.⁹² In the instant case, we have considered each disputed surrogate value (*see* Comment 4 and Comments 5A through 5D, above) and we have concluded that the Thai data is reliable and useable in each case. Thus, we have no reason to depart from our primary surrogate country in the instant case.

Comment 6: Selection of Surrogate Financial Statements

Background: At the *Preliminary Results*, the Department used the 2010 financial statements for the Thai companies Goodyear (Thailand) Public Company Limited (“Goodyear”) and Hwa Fong

⁹⁰ Zhongce cites to the following in support of its argument: Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) at note 7; *Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 77 FR 14493 (March 12, 2012), and accompanying IDM at Comment 1; *High Pressure Steel Cylinders from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying IDM at Comment 1.

⁹¹ *See, e.g., Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012) (“*Glycine from the PRC*”), and accompanying IDM at Comment 2.

⁹² *See Clearon Corp.*, Court No. 08-00364, Slip Op. 13-22, at 8-9 (CIT February 20, 2013) (“*Clearon Corp.*”).

Rubber (Thailand) Public Company Limited (“Hwa Fong”) to calculate surrogate financial ratios. After the *Preliminary Results*, Zhongce placed the 2011 financial statements for Goodyear and Hwa Fong onto the record.⁹³ Zhongce also placed on the record the 2011 statement for a Thai producer of rubber products, Inoue Rubber (Thailand) Public Company Limited (“Inoue Rubber”).⁹⁴

- Zhongce states that the financial ratios derived from the Philippine companies’ statements, which were placed on the record prior to the *Preliminary Results*, are more appropriate than the ratios derived from the Thai statements.
- Zhongce asserts that, in the alternative, the 2011 financial statements for Hwa Fong and Goodyear are more relevant and more contemporaneous than the 2010 financial statements used at the *Preliminary Results*. However, the Department should not use Goodyear’s 2011 statements because it suffered a loss in that year.
- Zhongce further asserts that the Department should also use the 2011 financial statements for Inoue Rubber, a producer of comparable merchandise.
- Petitioner contends that the Department should not use the financial statements of Inoue Rubber for the final results because Inoue Rubber appears to only manufacture “Industrial Elastomer Parts” and motorcycle tires, tubes, and wheel set assemblies—parts which are less comparable than the tires manufactured by the Goodyear and Hwa Fong.
- Petitioner also asserts that the Department should continue to use the 2010 financial statements for the two Thai companies that it used in the *Preliminary Results* because (1) the Department found them to be appropriate in the *Preliminary Results* and (2) Zhongce did not cite to any authority which would mandate that the Department make a change to use the 2011 financial statements.
- Petitioner argues that, should the Department decide to use the 2011 financial statements, the Department should not exclude Goodyear’s statement due to the reported loss in 2011. Instead, Petitioner recommends that the Department adjust Goodyear’s statement to exclude the loss, which was due to a flood, and which the financial statements indicate will be covered by insurance.

Department’s Position: For the final results we will use Hwa Fong’s 2011 financial statements and Goodyear’s 2010 financial statements to calculate surrogate financial ratios. We will not use Inoue Rubber’s financial statements, for the reasons discussed below.

The financial statements from Thailand more closely match the experience of an OTR tire producer in the PRC.⁹⁵ Specifically, the Thai financial statements on the record indicate production of tires for cars, airplanes, and garden equipment, which we have found to be comparable to OTR tire production; the Philippine producers whose financial statements are on the record reported production only of motorcycle and bicycle tires and tubes.⁹⁶ Zhongce has

⁹³ See Zhongce’s Post-Prelim SV Submission, at Exhibits D.45 and D.46.

⁹⁴ *Id.*, at Exhibit D.44.

⁹⁵ See Preliminary Decision Memorandum, at 10-11.

⁹⁶ See Petitioner’s February SV Submission, at Attachments 3 and 4 and Letter from Zhongce’s entitled “New Pneumatic Off-the-Road Tires from the PRC: Response of Hangzhou Zhongce Rubber Co. to Second

provided no explanation for why it believes the Philippine company financial statements are more appropriate than the Thai statements; nor has Zhongce pointed to any reason why the Thai financial statements are unusable.⁹⁷ Thus, we intend to use the Thai financial statements on the record to calculate surrogate financial ratios for the final results.

Goodyear and Hwa Fong's 2011 financial statements cover eight months of the POR, compared to the four months of the POR covered by their 2010 financial statements. When faced with two equally useable financial statements from the same company, it has been the Department's practice to use the financial statements for the year which covers a greater portion of the POR, and not to average together two financial statements for the same company.⁹⁸ However, in the instant case, Goodyear's 2011 financial statements are unusable due to a loss on its income statement.⁹⁹ Since Goodyear's 2010 financial statements are contemporaneous with the POR and are completely usable, we will continue to use Goodyear's 2010 financial statements for the final results.¹⁰⁰ Hwa Fong's 2011 financial statements are usable and cover more of the POR than their 2010 financial statements, so we will use Hwa Fong's 2011 financial statements for the final results. Aside from the issue of contemporaneity, neither party made further arguments with regards to Goodyear's 2010 financial statements or Hwa Fong's 2011 financial statements.

We have examined Inoue Rubber's financial statements and find that Inoue Rubber is primarily a producer of non-comparable merchandise, as the majority of its sales revenue is comprised of sales of merchandise such as industrial elastomer parts, tubes for motorcycles, and wheel set assemblies for motorcycles that are not comparable to subject merchandise produced by the respondents.¹⁰¹ Conversely, both Goodyear and Hwa Fong produce exclusively or primarily comparable merchandise (*i.e.*, tires). Thus, since Inoue Rubber primarily produces non-comparable merchandise and because we have useable financial statements from Goodyear and

Supplemental Sections C and D Questionnaire, Addendum Providing Public Financial Statements," dated August 20, 2012 at Exhibits D.34, D.35, and D.36.

⁹⁷ See Zhongce's Case Brief, at 13-14.

⁹⁸ See, *e.g.*, *First Administrative Review*, and accompanying IDM at Comment 11D; *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2008) ("*Certain Frozen Warmwater Shrimp From Vietnam*"), and accompanying IDM at Comment 3; *Honey From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 9271 (February 25, 2005), and accompanying IDM at Comment 3.

⁹⁹ See Zhongce's Post-Prelim SV Submission at Exhibit D.46. Note 23 of Goodyear's 2011 financial statements state that severe flooding in Thailand affected its facilities in October 2011, and thus caused the company to record a loss on its income statement for 2011. See, *e.g.*, the following cases where we declined to use financial statements with negative profit ratios: *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012), and accompanying IDM at Comment 3; *Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011), and accompanying IDM at Comment 9; and *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007), and accompanying IDM at Comment 2.

¹⁰⁰ See *Certain Frozen Warmwater Shrimp From Vietnam*, and accompanying IDM at Comment 3, where we averaged together financial statements covering different portions of the POR for shrimp processors Apex (2006/2007) and Gemini (2005/2006).

¹⁰¹ See Zhongce's Post-Prelim SV Submission, at Exhibit D.44, pages 5-8 of Inoue Rubber's Annual Report.

Hwa Fong, who both principally produce comparable merchandise, we continue to find that Goodyear and Hwa Fong's financial statements represent the best information available for purposes of calculating surrogate financial ratios, and we will decline to use Inoue Rubber's financial statements for these final results.¹⁰²

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

Paul Piquado
Assistant Secretary
for Import Administration

Date

¹⁰² See *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011), and accompanying IDM at Comment 2A, where we similarly declined to use a company's financial statements when it was shown that the company was primarily a producer of non-comparable merchandise and there was other useable financial statements on the record from a producer of comparable merchandise.